

1 John T. Brooks, State Bar No. 167793
Lisa K. Widdecke, State Bar No. 213250
2 LUCE, FORWARD, HAMILTON & SCRIPPS
600 West Broadway, Suite 2600
3 San Diego, California 92101-3372
Telephone No.: 619.236.1414
4 Fax No.: 619.232.8311
E-Mail: jtbrooks@luce.com
5 lwiddecke@luce.com

6 Attorneys for Defendant Motherhood Maternity

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 1558 BEN BLM

11 BARBARA HUMPHREY,

12 Plaintiff,

13 v.

14 PCCP OF SB LAS AMERICAS
OWNER LLC; JOCKEY
15 INTERNATIONAL GLOBAL INC;
NEIMAN MARCUS LAST CALL;
16 RITMO LATINO INC;
MAIDENFORM INC; LCI
17 HOLDINGS INC DBA LIZ
CLAIBORNE OUTLET #324;
18 SUNGLASS HUT TRADING CORP
DBA SUNGLASS OUTLET #4779;
19 MOTHERHOOD MATERNITY;
STRIDE RITE CHILDRENS GROUP
20 DBA STRIDE RITE OUTLET #6050;
BROOKS BROTHERS; SANRIO
21 SURPRISES; GUESS INC; J CREW
FACTORY STORE; PERFUME
22 OUTLET; PUMA OUTLET STORE;
CONVERSE OUTLET STORE;
23 SUNGLASS HUT INTL; PVH CORP
DBA CALVIN KLEIN #062;
24 KENNETH COLE CATALOG INC
DBA KENNETH COLE OUTLET
25 STORE; And DOES 1 THROUGH 10,
Inclusive,

26 Defendants.

28 ///

FILED

2008 AUG 22 PM 2:12

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY KVLH DEPUTY

Case No. _____

**DEFENDANT MOTHERHOOD
MATERNITY'S NOTICE OF
REMOVAL OF ACTION UNDER
28 U.S.C. SECTION 1331
(FEDERAL QUESTION)**

Complaint Filed: June 23, 2008
Trial Date: None Set

SR

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 SOUTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant Motherhood Maternity ("Removing
4 Defendant"), by and through its counsel, and pursuant to 28 U.S.C. section 1441(a),
5 hereby removes to this Court the state court action described below. In support of this
6 removal, Defendant states as follows:

7 1. On June 23, 2008, plaintiff Barbara Humphrey ("Plaintiff") filed this
8 action in the Superior Court of California, San Diego County, entitled BARBARA
9 HUMPHREY vs. PCCP of SB Las Americas Owner, LLC, *et al.*, Case No. 37-2008-
10 0007129-CU-CR-SC. The first date upon which Removing Defendant received a copy
11 of said Complaint was June 8, 2008, when defendant Motherhood Maternity was served
12 with a copy of the Complaint and Summons.

13 2. The Complaint alleges that Defendant discriminatorily denied Plaintiff
14 access to the full and equal enjoyment of, opportunity to participate in, and benefit
15 from, the goods, facilities, services, and accommodations at Defendant's place of
16 business located at 4201 Camino de la Puz, California, in violation of federal and state
17 law.

18 3. The Complaint alleges claims against Defendant for violations of federal
19 laws, including the Americans with Disabilities Act ("ADA"). The Complaint also
20 alleges violations of the following state laws: the Unruh Civil Rights Act and California
21 Accessibility laws. A true and correct copy of the Complaint is attached hereto as
22 Exhibit "A."

23 4. Defendant filed their Answer to the Complaint on August 22, 2008. A true
24 and correct copy of that answer is attached hereto as Exhibit "B."

25 ///

26 ///

27 ///

28 ///

1 5. This Court has original jurisdiction of this action pursuant to 28 U.S.C.
2 §1331, and supplemental jurisdiction over plaintiff's state law claims pursuant to 28
3 U.S.C. §1367. Removal of the action to this Court is proper pursuant to 28 U.S.C.
4 §1441(b).

5 6. Pursuant to 28 U.S.C. §1446(a), Removing Defendant has attached a true
6 and correct copy of all of the process, pleadings and orders from the state court action.
7 This Notice of Removal is filed within thirty days after Defendant Motherhood
8 Maternity received a copy of the Complaint, in compliance with 28 U.S.C. §1446(b).

9 **FEDERAL QUESTION JURISDICTION**

10 7. The Complaint attempts to state a count against Removing Defendant
11 under the ADA. (See Complaint, ¶¶ 19-29.) Federal courts have original jurisdiction
12 over ADA claims under 28 U.S.C. §1331, and therefore the entire case is removable
13 under 28 U.S.C. §1441. See Jones v. Illinois Central Railroad Co., 859 F.Supp. 1144,
14 1145 (N.D.Ill. 1994) ("the existence of concurrent jurisdiction [over ADA claims] does
15 not alter the fact that ADA actions are federal question cases.").

16 8. The Court has supplemental jurisdiction over the remaining state law
17 claims under 28 U.S.C. §1367.

18 9. Removing Defendant is filing, on the date of this Notice, a Notice of
19 Removal of Civil Action to Federal Court, with the San Diego Superior Court in Case
20 No. 37-2008-00071279-CU-CR-SC. A true and correct copy of the Notice of Removal
21 of Civil Action to Federal Court is attached hereto as Exhibit "C."

22 10. A true and correct copy of the Notice to Plaintiff of Removal of Action To
23 Federal Court served on the Plaintiff in the state court action is attached hereto as
24 Exhibit "D."

25 ///

26 ///

27 ///

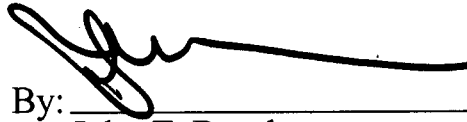
28 ///

1 WHEREFORE, Removing Defendant requests that the state court action now
2 pending against it in the Superior Court of the State of California for the County of
3 San Diego be removed therefrom to this United States District Court for the Southern
4 District of California.

5 DATED: August 22, 2008

Respectfully submitted,

6 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

7 

8 By: _____

John T. Brooks

9 Lisa K. Widdecke

Attorneys for Defendant Motherhood Maternity

10
11 101113774.1
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

PCCP OF SB LAS AMERICAS OWNER LLC; JOCKEY INTERNATIONAL GLOBAL INC;
NEIMAN MARCUS LAST CALL; RITMO LATINO INC; MAIDENFORM INC; LCI HOLDINGS
INC DBA LIZ CLAIBORNE OUTLET #134; SUNGLASS HUT TRADING CORP DBA
SUNGLASS OUTLET #4779; MOTHERHOOD MATERNITY; STRIDE RITE CHILDRENS
GROUP INC DBA STRIDE RITE OUTLET #6030; BROOKS BROTHERS; SANRIO SURPRISES;
GUESS INC; J CREW FACTORY STORE; PERFUME OUTLET; PUMA OUTLET STORE;
CONVERSE OUTLET STORE; SUNGLASS HUT INTL; PVH CORP DBA CALVIN KLEIN #162;
KENNETH COLE CATALOG INC DBA KENNETH COLE OUTLET STORE; and DOES 1
THROUGH 10, inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):
BARBARA HUMPHREY

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SAN DIEGO SUPERIOR COURT

JUN 27 2008

CLERK OF THE SUPERIOR COURT

By A. Naranjo

You have **30 CALENDAR DAYS** after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/español/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/español/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: San Diego Superior Court.
(El nombre y dirección de la corte es):

CASE NUMBER
37-2008-00071279-CU-CR-SC

South County Regional Center
500 3rd Avenue, Chula Vista, California 91910

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Theodore A. Pincock, Esq. Bar #: 153434; David C. Wakefield, Esq. Bar #: 185736; Michelle Wakefield, Esq. Bar #: 200424
3033 Fifth Avenue, Suite 410 San Diego, CA 92103
A. Naranjo

DATE: JUN 27 2008
(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1 ☐ as an individual defendant.
2 ☐ as the person sued under the fictitious name of (specify):

- 3 ☒ on behalf of (specify): Motherhood Maternity
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4 ☒ by personal delivery on (date): 8/8/08

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. January 1, 2004)

SUMMON

www.courtinfo.ca.gov
Law Publishers

Page 1 of 1
Code of Civil Procedure
§ 412.20, 465

PINNOCK & WAKEFIELD

A Professional Corporation

Theodore A. Pinnock, Esq.

Bar #: 153434

David C. Wakefield, Esq.

Bar #: 185736

3033 Fifth Avenue, Suite 410

San Diego, CA 92103

Telephone: 619.858.3671

Facsimile: 619.858.3646

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

BARBARA HUMPHREY,

Plaintiff,

v.

**PCCP OF SB LAS AMERICAS
OWNER LLC; JOCKEY
INTERNATIONAL GLOBAL INC;
NEIMAN MARCUS LAST CALL;
RITMO LATINO INC;
MAIDENFORM INC; LCI HOLDINGS
INC DBA LIZ CLAIBORNE OUTLET
#324; SUNGLASS HUT TRADING
CORP DBA SUNGLASS OUTLET
#4779; MOTHERHOOD
MATERNITY; STRIDE RITE
CHILDRENS GROUP INC DBA
STRIDE RITE OUTLET #6050;
BROOKS BROTHERS; SANRIO
SURPRISES; GUESS INC; J CREW
FACTORY STORE; PERFUME
OUTLET; PUMA OUTLET STORE;
CONVERSE OUTLET STORE;
SUNGLASS HUT INTL; PVH CORP
DBA CALVIN KLEIN #062;
KENNETH COLE CATALOG INC
DBA KENNETH COLE OUTLET
STORE; And DOES 1 THROUGH 10,
Inclusive**

Case No. 37-2008-00071279-CU-CR-SC

**CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ; CIVIL
CODE 51, 52, 54, 54.1, 54.3]**

**UNLIMITED CIVIL CASE -
PERMANENT INJUNCTIVE RELIEF**

Defendants.

NAMED DEFENDANTS AND NAMED PLAINTIFF

1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Plaintiff is informed and believes and thereon alleges that Defendants PCCP OF SB LAS AMERICAS OWNER LLC; JOCKEY INTERNATIONAL GLOBAL INC; NEIMAN MARCUS LAST CALL; RITMO LATINO INC; MAIDENFORM INC; LCI HOLDINGS INC DBA LIZ CLAIBORNE OUTLET #324; SUNGLASS HUT TRADING CORP DBA SUNGLASS OUTLET #4779; MOTHERHOOD MATERNITY; STRIDE RITE CHILDRENS GROUP INC DBA STRIDE RITE OUTLET #6050; BROOKS BROTHERS; SANRIO SURPRISES; GUESS INC; J CREW FACTORY STORE; PERFUME OUTLET; PUMA OUTLET STORE; CONVERSE OUTLET STORE; SUNGLASS HUT INTL; PVH CORP DBA CALVIN KLEIN #062; KENNETH COLE CATALOG INC DBA KENNETH COLE OUTLET STORE are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 4061 CAMINO DE LA PLZ, SAN DIEGO, CA 92173-5929; Assessor's Parcel Number: 666-401-14-00. Defendant PCCP OF SB LAS AMERICAS OWNER LLC c/o Registered Agent: NATIONAL REGISTERED AGENTS, INC. (C1941323), located at 222 N SEPULVEDA BLVD STE 2222, EL SEGUNDO, CA 90245-5614 or 725 CONSHOHOCKEN STATE RD, BALA CYNWYD, PA 19004-2102. Defendant JOCKEY INTERNATIONAL GLOBAL INC is located at 4061 CAMINO DE LA PLZ # 476, SAN DIEGO, CA 92173-5929 or 2300 60TH ST, KENOSHA, WI 53140-3822. Defenant NEIMAN MARCUS LAST CALL is located at 4061 CAMINO DE LA PLZ STE 490, SAN DIEGO, CA 92173-5929 or C/O GEORGE A RAWLINGS, located at 1201 ELM ST, DALLAS, TX 75270-2002. Defendant RITMO LATINO INC is located at 4201 CAMINO DE LA PLZ STE 124, SAN DIEGO, CA 92173-3048 or c/o Registered Agent: CHAVARRIA,

1 MIREYA, located at 7278 OAK TREE PL, FONTANA, CA 92336-5734 or 46 PARK RD,
 2 TINTON FALLS, NJ 07724-9715. Defendant MAIDENFORM INC is located at 4201 CAMINO
 3 DE LA PLZ # 136, SAN DIEGO, CA 92173-3046 or c/o Registered Agent: CORPORATION
 4 SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC -
 5 LAWYERS INCORPORATING SERV, located at 2730 GATEWAY OAKS DR STE 100,
 6 SACRAMENTO, CA 95833-3503 or 154 AVENUE E, BAYONNE, NJ 07002-4435. Defendant
 7 LCI HOLDINGS INC DBA LIZ CLAIBORNE OUTLET #324 is located at 4201 CAMINO DE
 8 LA PLZ # 138, SAN DIEGO, CA 92173-3046 or c/o Registered Agent: C T CORPORATION
 9 SYSTEM, located at 818 W 7TH ST, LOS ANGELES, CA 90017-3407. Defendant SUNGLASS
 10 HUT TRADING CORP DBA SUNGLASS OUTLET #4779 is located at 4201 CAMINO DE
 11 LA PLZ # 122, SAN DIEGO, CA 92173-3046 or 4000 LUXOTTICA PL, MASON, OH 45040-
 12 8114 or c/o Registered Agent: C T CORPORATION SYSTEM, 818 W 7TH ST, LOS
 13 ANGELES, CA 90017-3407. Defendant MOTHERHOOD MATERNITY is located at 4201
 14 Camino De la Plz, San Ysidro, CA 92173-3046. Defendant STRIDE RITE CHILDRENS
 15 GROUP INC DBA STRIDE RITE OUTLET #6050 is located at 4201 CAMINO DE
 16 LA PLZ STE 118, SAN DIEGO, CA 92173-3047 or c/o Registered Agent: C T CORPORATION
 17 SYSTEM, located at 818 W 7TH ST, LOS ANGELES, CA 90017-3407 or 191 SPRING ST,
 18 LEXINGTON, MA 02421-8045. Defendant BROOKS BROTHERS is located at 4265 Camino
 19 De La Plaza, San Ysidro, CA 92173. Defendant SANRIO SURPRISES is located at 4265
 20 Camino De La Plaza 198, San Ysidro, CA 92173. Defendant GUESS INC is located at 4265
 21 Camino De La Plaza 228, San Ysidro, CA 92173. Defendant J CREW FACTORY STORE is
 22 located at 4155 Camino De La Plaza 436, San Ysidro, CA 92173. Defendant PERFUME
 23 OUTLET is located at 4265 Camino De La Plaza 182, San Ysidro, CA 92173. Defendant PUMA
 24 OUTLET STORE is located at 4155 Camino De La Plaza 451, San Ysidro, CA 92173.
 25 Defendant CONVERSE OUTLET STORE is located at 4211 Camino De La Plaza 176, San
 26 Ysidro, CA 92173. Defendant SUNGLASS HUT INTL is located at 4345 Camino De La Plaza
 27 439, San Ysidro, CA 92173. Defendant PVH CORP DBA CALVIN KLEIN #062 is located at
 28

1 4125 CAMINO DE LA PLZ # 416, SAN DIEGO, CA 92173-3070. Defendant KENNETH
 2 COLE CATALOG INC DBA KENNETH COLE OUTLET STORE is located at 4125 CAMINO
 3 DE LA PLZ STE 418, SAN DIEGO, CA 92173-3068 or c/o Registered Agent: C T
 4 CORPORATION SYSTEM, located at 818 W 7TH ST, LOS ANGELES, CA 90017-3407 .

5 2. The words Plaintiff and Plaintiffs as used herein specifically include BARBARA
 6 HUMPHREY.

7 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
 8 employees, agents, of Defendants PCCP OF SB LAS AMERICAS OWNER LLC; JOCKEY
 9 INTERNATIONAL GLOBAL INC; NEIMAN MARCUS LAST CALL; RITMO LATINO INC;
 10 MAIDENFORM INC; LCI HOLDINGS INC DBA LIZ CLAIBORNE OUTLET #324;

11 ~~SUNGLASS HUT TRADING CORP DBA SUNGLASS OUTLET #4779; MOTHERHOOD~~
 12 ~~MATERNITY; STRIDE RITE CHILDRENS GROUP INC DBA STRIDE RITE OUTLET~~
 13 ~~#6050; BROOKS BROTHERS; SANRIO SURPRISES; GUESS INC; J CREW FACTORY~~
 14 ~~STORE; PERFUME OUTLET; PUMA OUTLET STORE; CONVERSE OUTLET STORE;~~
 15 ~~SUNGLASS HUT INTL; PVH CORP DBA CALVIN KLEIN #062; KENNETH COLE~~
 16 CATALOG INC DBA KENNETH COLE OUTLET STORE. Plaintiff is ignorant of the true
 17 names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore
 18 sues these Defendants by such fictitious names. Plaintiff will pray leave of the court to amend
 19 this complaint to allege the true names and capacities of the Does when ascertained.

20 4. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them
 21 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
 22 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
 23 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff
 24 is further informed and believe, and thereon allege, that each of the Defendants herein gave
 25 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.
 26

27 CONCISE SET OF FACTS

28 5. Plaintiff BARBARA HUMPHREY (hereinafter "Plaintiff") has physical impairments and

1 due to these impairments she has learned to successfully operate a wheelchair for mobility.
2 Plaintiff said physical impairments substantially limit one or more of the following major life
3 activities including but not limited to: walking.

4 6. Plaintiff has physical impairments because their conditions affect one or more of the
5 following body systems: neurological, musculoskeletal, special sense organs, and/or
6 cardiovascular. Further, Plaintiff said physical impairments substantially limits one or more of
7 the following major life activities. In addition, Plaintiff cannot perform one or more of the said
8 major life activities in the manner, speed, and duration when compared to the average person.
9 Moreover, Plaintiff has a history of or has been classified as having a physical impairment as
10 required by 42 U.S.C. § 12102(2)(A).

11 7. On November 3, 2007, Plaintiff BARBARA HUMPHREY went to Defendants' public
12 accommodation facilities located at Property Address: 4061 CAMINO DE LA PLZ, SAN
13 DIEGO, CA 92173-5929; Assessor's Parcel Number: 666-401-14-00 to utilize their goods and/or
14 services. When Plaintiff BARBARA HUMPHREY patronized Defendants' public
15 accommodation facilities, she was unable to use and/or had difficulty using the public
16 accommodations' facilities including but not limited to the barriers to access listed herein and
17 said facilities were not accessible because they failed to comply with ADA Access Guidelines For
18 Buildings and Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36,
19 App. A) and/or California's Title 24 Building Code Requirements. Defendants failed to remove
20 barriers to equal access within their public accommodation facilities as required.

21 8. Plaintiff BARBARA HUMPHREY personally experienced difficulty with said access
22 barriers as listed herein to the present Complaint at Defendants' public accommodation facilities
23 located on the Property and/or has knowledge of said access barriers and is presently deterred
24 from accessing the public accommodation. Plaintiff alleges that these known barriers to access
25 are not an exhaustive list of the barriers to access that exist at Defendants' facilities.

26 9. Defendants failed to provide auxiliary aids and services that are necessary to ensure equal
27 access to the goods, services, privileges, or accommodations that it offers. Title 28, part 36.303
28

1 of Code of Federal Regulations states:

2 (a) General. A public accommodation shall take those steps that may be necessary to ensure that
3 no individual with a disability is excluded, denied services, segregated or otherwise treated
4 differently than other individuals because of the absence of auxiliary aids and services, unless the
5 public accommodation can demonstrate that taking those steps would fundamentally alter the
6 nature of the goods, services, facilities, privileges, advantages, or accommodations being offered
7 or would result in an undue burden, i.e., significant difficulty or expense.

8 (b) Examples. The term "auxiliary aids and services" includes:

- 9 (1) Qualified interpreters, notetakers, computer-aided transcription services, written
10 materials, telephone-handset amplifiers, assistive listening devices, assistive listening
11 systems, telephones compatible with hearing aids, closed caption decoders, open and
12 closed captioning, telecommunications devices for deaf persons (TDD's), videotext
13 displays, or other effective methods of making aurally delivered materials available to
14 individuals with hearing impairments;
15 (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print
16 materials, or other effective methods of making visually delivered materials available to
17 individuals with visual impairments;
18 (3) Acquisition or modification of equipment or devices; and
19 (4) Other similar services and actions.
20

21 (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids
22 and services where necessary to ensure effective communication with individuals with
23 disabilities.

24 10. Plaintiff can prove these barriers as Plaintiff conducted a preliminary survey of
25 Defendants' facility. Plaintiff specifically alleges that Defendants knew, to a substantial
26 certainty, that the architectural barriers precluded equal access. First, Plaintiff will prove that
27 Defendants had actual knowledge that the architectural barriers precluded equal access and that
28 the noncompliance with ADAAG as to accessible entrances was intentional. Second, due to the

1 abundance of ADA information and constant news covers of ADA lawsuits, Defendants had
 2 actual knowledge of the ADA and decided deliberately not to remove architectural barriers.
 3 Third, Defendants have no plans to remodel. Fourth, Defendants had actual knowledge of ADA
 4 given all the ADA public awareness campaigns, the abundance of free ADA information and the
 5 media's constant ADA coverage. Fifth, a human being acting for the defendants made a
 6 conscious decision as to how to proceed given the presence of the architectural barriers. Plaintiff
 7 alleges any alternative methods preclude integration of disabled patrons, as it requires them to use
 8 second-class facilities. Also, expert testimony will show the facility contained inaccessible
 9 features. Plaintiff alleges businesses often state that they have few customers with disabilities.
 10 ~~Plaintiff alleges such customers avoid patronizing inaccessible businesses and are deterred from~~
 11 ~~patronizing such businesses.~~

12 11. The Plaintiff went to Las Americas Premium Outlets. Jockey at 4061 CAMINO DE
 13 LA PLZ # 476 has no International Symbol of Accessibility signage at the entrance, the counter
 14 exceeds 36 inches and there are loose mats. The Neiman Marcus at 4061 CAMINO DE
 15 LA PLZ STE 490 has no International Symbol of Accessibility signage at the entrance. The
 16 Ritmo Latino at 4201 CAMINO DE LA PLZ STE 124 has no International Symbol of
 17 Accessibility signage at the entrance, and the counter exceeds 36 inches. The Maidenform at
 18 4201 CAMINO DE LA PLZ # 136 has no International Symbol of Accessibility signage at the
 19 entrance, the counter exceeds 36 inches and there are loose mats. The Liz Claiborne Outlet at
 20 4201 CAMINO DE LA PLZ # 138 has no International Symbol of Accessibility signage at the
 21 entrance, and there are loose mats. The Sunglass Outlet at 4201 CAMINO DE LA PLZ # 122 has
 22 a counter exceeds 36 inches. The Motherhood Maternity's counter exceeds 36 inches and there
 23 are loose mats. The Stride Rite Outlet's counter exceeds 36 inches. The Brooks Brothers'
 24 counter exceeds 36 inches. The Sanrio's counter exceeds 36 inches and there are loose mats. The
 25 Guess Inc has no International Symbol of Accessibility signage at the entrance, and the counter
 26 exceeds 36 inches. The J Crew Factory Store has no International Symbol of Accessibility
 27 signage at the entrance, and the counter exceeds 36 inches. The Perfume Outlet has no
 28

1 International Symbol of Accessibility signage at the entrance, and the counter exceeds 36 inches.
2 The Puma Outlet has no International Symbol of Accessibility signage at the entrance, the counter
3 exceeds 36 inches and there are loose mats. The Converse Outlet has no International Symbol of
4 Accessibility signage at the entrance, and there are loose mats. The Sunglass Hut Intl at 4345
5 Camino de la Plz Ste 439 has no International Symbol of Accessibility signage at the entrance,
6 and the counter exceeds 36 inches. The Calvin Klein has loose mats. And Kenneth Cole Outlet's
7 counter exceeds 36 inches.

8 12. Plaintiff intends to return to Defendants' public accommodation facilities in the immediate
9 future. Plaintiff was deterred and is presently deterred from returning due to her knowledge of
10 the barriers to access that exist at Defendants' facilities.

11 13. Pursuant to federal and state law, Defendants are required to remove barriers to their
12 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties
13 under the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also,
14 Defendants should have known that individuals with disabilities are not required to give notice to
15 a governmental agency before filing suit alleging Defendants failed to remove architectural
16 barriers.

17 14. Plaintiff believes and herein alleges Defendants' facilities have access violations not
18 directly experienced by Plaintiff which would preclude or limit access by Plaintiff potentially
19 including but not limited to violations of the ADA, ADA Accessibility Guidelines (Codified in 28
20 C.F.R. Part 36, App. A) and Title 24 of the California Building Code. Plaintiff alleges
21 Defendants are required to utilize the ADA checklist for Readily Achievable Barrier Removal
22 approved by the United States Department of Justice and created by Adaptive Environments.
23 Plaintiff is entitled to injunctive relief to remove all barriers to access that are related to his
24 disability even those barriers that are only known to exist but are not directly experienced by
25 plaintiff. *Doran v 7-Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th Cir 2007).

26 15. Based on these facts, Plaintiff alleges she was discriminated against each time he
27 patronized and/or was deterred from patronizing Defendants' facilities. Plaintiff was extremely
28

upset due to Defendants' conduct.

16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

**WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED
DEFENDANT**

17. Defendants PCCP OF SB LAS AMERICAS OWNER LLC; JOCKEY INTERNATIONAL GLOBAL INC; NEIMAN MARCUS LAST CALL; RITMO LATINO INC; MAIDENFORM INC; LCI HOLDINGS INC DBA LIZ CLAIBORNE OUTLET #324; SUNGLASS HUT TRADING CORP DBA SUNGLASS OUTLET #4779; MOTHERHOOD MATERNITY; STRIDE RITE CHILDRENS GROUP INC DBA STRIDE RITE OUTLET #6050; BROOKS BROTHERS; SANRIO SURPRISES; GUESS INC; J CREW FACTORY STORE; PERFUME OUTLET; PUMA OUTLET STORE; CONVERSE OUTLET STORE; SUNGLASS HUT INTL; PVH CORP DBA CALVIN KLEIN #062; KENNETH COLE CATALOG INC DBA KENNETH COLE OUTLET STORE and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

18. Plaintiff avers that the Defendants are liable for the following claims as alleged below:

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The Americans
With Disabilities Act Of 1990**

Claim I

19. Based on the facts stated above, Defendants discriminated against Plaintiff on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation as Defendants own, lease (or lease to), or operate a place of public accommodation in violation of 42 U.S.C. §12182.

Claim II

20. Based on the facts stated above, Defendants discriminated against Plaintiff directly, or

1 through contractual, licensing, or other arrangements, to a denial of the opportunity of the
2 individual or class to participate in or benefit from the goods, services, facilities, privileges,
3 advantages, or accommodations of an entity in violation of 42 U.S.C. §12182.

4 Claim III

5 21. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
6 discriminatory to afford an individual or class of individuals, on the basis of a disability or
7 disabilities of such individual or class, directly, or through contractual, licensing, or other
8 arrangements with the opportunity to participate in or benefit from a good, service, facility,
9 privilege, advantage, or accommodation that is not equal to that afforded to other individuals in
10 violation of 42 U.S.C. §12182.

11 Claim IV

12 22. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
13 discriminatory to provide an individual or class of individuals, on the basis of a disability or
14 disabilities of such individual or class, directly, or through contractual, licensing, or other
15 arrangements with a good, service, facility, privilege, advantage, or accommodation that is
16 different or separate from that provided to other individuals.

17 Claim V

18 23. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
19 failed to afford to an individual with a disability in the most integrated setting appropriate to
20 the needs of the individual in violation of 42 U.S.C. §12182.

21 Claim VI

22 24. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
23 utilized standards or criteria or methods of administration that have the effect of discriminating on
24 the basis of disability; or that perpetuate the discrimination of others who are subject to common
25 administrative control in violation of 42 U.S.C. §12182.

26 Claim VII

27 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
28

1 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
 2 advantages, accommodations, or other opportunities to an individual or entity because of the
 3 known disability of an individual with whom the individual or entity is known to have a
 4 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.
 5 1208 (1996)

6 Claim VIII

7 26. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
 8 engaged in the specific prohibitions as stated in 42 U.S.C. §12182.

9 Claim IX

10 27. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendant
 11 failed to demonstrate that the removal of a barrier is not readily achievable, and made such goods,
 12 services, facilities, privileges, advantages, or accommodations available through alternative
 13 methods in a segregated manner in violation of 42 U.S.C. §12182. Plaintiff is entitled to
 14 injunctive relief to remove all barriers to access that are related to her disability even those
 15 barriers that are only known to exist but are not directly experienced by plaintiff. *Doran v 7-*
 16 *Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th Cir 2007).

17 Claim X

18 28. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
 19 altered the use of their establishment in a manner that affected or could have affected the usability
 20 of the facility or part thereof and failed to make alterations in such a manner that, to the maximum
 21 extent feasible, the altered portions of the facility are readily accessible to and usable by
 22 individuals with disabilities in violation of 42 U.S.C. §12183.

23 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.

24
 25 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
 26 CALIFORNIA ACCESSIBILITY LAWS

27 CLAIM I: Denial Of Full And Equal Access

28 30. Based on the facts plead above and elsewhere in this complaint, Plaintiff was denied full

and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1.

CLAIM II: Failure To Modify Practices, Policies And Procedures

31. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff was subjected to discrimination in violation of Civil Code § 54.1.

CLAIM III: Violation Of The Unruh Act

32. Based on the facts plead above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least a prima facie case of discriminatory intent.

33. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm unless Defendants are ordered to remove architectural, non-architectural, and communication barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and a substantial segment of the disability community. Plaintiff alleges there is a state and national public interest in requiring accessibility in places of public accommodation. Plaintiff has no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff alleges that a structural or mandatory injunction is necessary to enjoin compliance with state civil rights laws enacted for the benefit of individuals with disabilities.

1 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
2
3
4
5
6
7
8
9

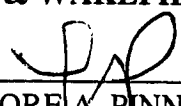
10 DEMAND FOR JUDGMENT FOR RELIEF:

- 11 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
12 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
13 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
14 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
15 Guidelines (Codified in 28 C.F.R. Part 36, App. A);
16 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
17 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
18 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
19 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
20 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
21 § 52; 54.3;
22 G. A Jury Trial and;
23 H. For such other further relief as the court deems proper.
24

25 Respectfully submitted:

26 Dated: June 16, 2008

PINNOCK & WAKEFIELD, A.P.C.

27 By: 
THEODORE A. PINNOCK, ESQ.
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiff
28

FILED
SOUTH COUNTY

2008 AUG 22 A 11: 34

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 John T. Brooks, State Bar No. 167793
Lisa K. Widdecke, State Bar No. 213250
2 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
3 San Diego, California 92101-3372
Telephone No.: 619.236.1414
4 Fax No.: 619.232.8311

5
6 Attorneys for Defendant MOTHERHOOD MATERNITY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO, SOUTH COUNTY

10
11 BARBARA HUMPHREY,

12 Plaintiff,

13 v.

14 PCCP OF SB LAS AMERICAS OWNER
LLC; JOCKEY INTERNATIONAL
15 GLOBAL INC; NEIMAN MARCUS LAST
CALL; RITMO LATINO INC;
16 MAIDENFORM INC; LCI HOLDINGS INC
DBA LIZ CLAIBORNE OUTLET #324;
17 SUNGLASS HUT TRADING CORP DBA
SUNGLASS OUTLET #4779;
18 MOTHERHOOD MATERNITY; STRIDE
RITE CHILDRENS GROUP DBA STRIDE
19 RITE OUTLET #6050; BROOKS
BROTHERS; SANRIO SURPRISES; GUESS
20 INC; J CREW FACTORY STORE;
PERFUME OUTLET; PUMA OUTLET
21 STORE; CONVERSE OUTLET STORE;
SUNGLASS HUT INTL; PVH CORP DBA
22 CALVIN KLEIN #062; KENNETH COLE
CATALOG INC DBA KENNETH COLE
23 OUTLET STORE; And DOES 1 THROUGH
10, Inclusive,

24 Defendants.

Case No. 37-2008-00071279-CU-CR-SC

The Hon. William S. Cannon
Dept. S-04

ANSWER TO CIVIL COMPLAINT

25
26 Defendant MOTHERHOOD MATERNITY ("answering defendant") hereby answers plaintiff

27 BARBARA HUMPHREY's ("plaintiff") Complaint as follows:

28 ///

I.

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30, answering defendant denies generally and specifically each, every, and all of the allegations of the Complaint alleged against answering defendant, and the whole thereof. Answering defendant further denies that plaintiff has sustained, or will sustain, any injury, damage, or loss by reason of any act, omission, breach, or negligence, or any other conduct or the absence thereof, on the part of answering defendant, or any agent, attorney, servant, or employee of answering defendant.

II.

**WITHOUT WAIVING ANY OF THE FOREGOING, ANSWERING
DEFENDANT, FOR ITS AFFIRMATIVE DEFENSES TO THE
COMPLAINT, ALLEGE AS FOLLOWS:**

The following separate affirmative defenses are asserted to the Complaint, and to each purported cause of action therein brought against answering defendants. By pleading these affirmative defenses, the answering defendant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to plaintiff. Moreover, nothing stated herein is intended or shall be construed as a concession that any particular issue or subject matter is relevant to plaintiff's allegations.

FIRST AFFIRMATIVE DEFENSE**(Failure to State a Claim for Relief)**

The Complaint, and each and every purported claim for relief therein, fails to state facts sufficient to constitute a claim for relief against answering defendant.

SECOND AFFIRMATIVE DEFENSE**(Defendant's Full Performance)**

Answering defendant is informed and believes, and thereon alleges, that it has performed and fully discharged any and all obligations and legal duties to plaintiff pertinent to the matters alleged in the Complaint.

///

///

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Waiver, Estoppel, Excuse and Mistake)**

3 Answering defendant is informed and believes, and thereon alleges, that some or all of
4 plaintiff's claims are barred under the principles of waiver, estoppel, excuse and/or mistake.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Laches and Unreasonable Delay)**

7 The Complaint, and each and every purported claim for relief therein, is barred under the
8 principles of laches and unreasonable delay.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 The Complaint, and each and every purported claim for relief therein, is barred as a result
12 of plaintiff's unclean hands.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate)**

15 Plaintiff, though under a duty to do so, has failed and neglected to mitigate her alleged
16 damages, and therefore, cannot recover against answering defendant, whether as alleged or otherwise.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **(Statutes of Limitations)**

19 The Complaint, and each and every purported claim for relief therein, is barred by the
20 applicable statutes of limitations, including but not limited to, those set forth in California Code of
21 Civil Procedure sections 335.1, 337.1, 337.15, 338, 340 and 343.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Privilege/Justification)**

24 Some or all of the claims for damages in the Complaint are barred in that all decisions and
25 actions of answering defendant with respect to the subject matter of this lawsuit were undertaken in
26 good faith, in the absence of malicious intent, and constituted a lawful, proper, and justified means to
27 further legitimate economic interests.

28 ///

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Readily Achievable)**

3 Some or all of the claims in the Complaint are barred in that the relief plaintiff requests is not
4 readily achievable.

5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Structurally Impracticable)**

7 Some or all of the claims in the Complaint are barred in that the relief plaintiff requests would
8 be structurally impracticable.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(Undue Burden)**

11 Some or all of plaintiff's claims are barred because the relief plaintiff requests is unreasonable,
12 would impose an undue burden and/or fundamentally alter the Subject Property and/or the nature of
13 the goods or services provided.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Unconstitutional)**

16 Some or all of plaintiff's claims are barred because they are predicated on unconstitutionally
17 vague and/or overly broad interpretations of regulations or laws or, alternatively, the applicable
18 regulations or laws themselves are unconstitutionally vague and/or overbroad.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 **(Due Process)**

21 Some or all of plaintiff's claims are barred by public policy and due process considerations
22 because the Subject Property and the building constructed thereon was constructed relying in good
23 faith upon the law, and applicable state regulations, pronouncements from federal and state agencies,
24 and/or state and local approvals. Granting some or all of the relief plaintiff requests would be
25 inequitable and would violate public policy and due process under state and/or federal constitutions.

26 ///

27 ///

28 ///

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Mootness)**

3 Some or all of the claims in the Complaint are moot in that answering defendant is and/or has
4 been in compliance with the laws, statutes, and regulations governing treatment of individuals with a
5 substantial physical and/or mental limitation.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 **(Standing)**

8 Plaintiff lacks standing to assert some or all of the claims alleged in the Complaint.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Safety)**

11 Some or all of the modifications proposed by plaintiff may jeopardize the health and/or safety
12 of customers.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 **(Justification)**

15 Some or all of answering defendant's actions in this matter were taken in reliance upon the
16 standards and guidelines of the ADA and/or state law and regulations and were reasonably prudent
17 under the circumstances.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 **(Lack of Proximate Cause)**

20 No act or omission of answering defendant was the proximate cause of plaintiff's damages, if
21 any. In the alternative, plaintiff's alleged damages, if any, were proximately caused by the conduct of
22 plaintiff and/or persons or entities other than answering defendants. Plaintiff's damages, if any, must
23 be reduced in proportion to the amount attributable to the conduct of plaintiff and/or persons or
24 entities other than answering defendant up to and including 100 percent. Answering defendant further
25 alleges that if plaintiff recovers, then pursuant to Civil Code sections 1431.2, et seq., it is not liable for
26 any non-economic damages that are not directly proportional to answering defendant's percentage of
27 fault.

28 ///

NINETEENTH AFFIRMATIVE DEFENSE

(Not Entitled to Attorneys' Fees or Punitive Damages)

The Complaint, and each cause of action contained therein, fails to allege facts sufficient to entitle plaintiff to recover attorneys' fees and/or punitive damages against answering defendant.

TWENTIETH AFFIRMATIVE DEFENSE

(Vagueness, Uncertainty, Ambiguity)

The Complaint, and each and every purported claim for relief therein, is vague, uncertain and ambiguous.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Prospective Relief Only)

If any relief is granted to plaintiff, it should be granted prospectively only.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Consent)

Any recovery on plaintiff's Complaint, or any purported cause of action contained therein, is barred because plaintiff consented to the alleged conduct.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Absence of Control)

Answering defendant is an improper party as to some or all causes of action stated in this matter in that they do not have sufficient control concerning the actions of other parties in this matter.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Modification to Building)

Plaintiff's claims are barred in whole or in part because the claims as alleged do not require construction, alteration or repair to new or existing establishments.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Existing Facility)

Plaintiff's claims are barred in whole or in part because the Subject Property was an existing facility not subject to the applicable standards for newly constructed or altered facilities.

///

TWENTY-SIXTH AFFIRMATIVE DEFENSE**(Assumption of Risk)**

Plaintiff's claims are barred in whole or in part because Plaintiff assumed the risk that she could be damaged when she entered onto the Subject Property.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE**(No Knowledge of Alleged Violations)**

Plaintiff's claims are barred in whole or in part to the extent that her claims are based on an alleged act or omission by answering defendant that was made in good faith without knowledge of any violation of law.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE**(Adequate Remedy at Law)**

To the extent that members of the general public that plaintiff purports to represent have sustained any injury or damage, which is not conceded, any such injury or damage could be adequately compensated in an action at law. Accordingly, plaintiff is not entitled to seek or obtain equitable relief.

TWENTY-NINTH AFFIRMATIVE DEFENSE**(Additional Affirmative Defenses)**

Answering defendant currently has insufficient information upon which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses available. Answering defendant reserves the right to assert additional affirmative defenses in the event discovery indicates they would be appropriate.

WHEREFORE, answering defendant prays for judgment as follows:

1. That all relief requested in the Complaint be denied;
2. That plaintiff take nothing by virtue of this action;

///

///

///

///

PROOF OF SERVICE

FILED
SOUTH COUNTY

Barbara Humphrey v. PCCP of SB Las Americas Owner LLC, et al.

Case No. 37-2008-00071279-CU-CR-SC

2008 AUG 22 A 11: 34

I, SYLVIA TERRY, declare as follows:

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

I am employed with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am over the age of eighteen years, and am not a party to this action.

On August 22, 2008, I served the following:

ANSWER TO CIVIL COMPLAINT

on the interested parties in this action by:

XX

U. S. MAIL: I placed the copies in a separate envelope, with postage fully prepaid, for each address named on the attached service list for collection and mailing on the below indicated day following the ordinary business practices at Luce, Forward, Hamilton & Scripps LLP. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit.

HAND DELIVERY: I placed the originals in a separate envelope addressed to each addressee as indicated below, and delivered it to Cal Express for personal service.

Attorneys for Plaintiffs:
Pinnock & Wakefield
Theodore A. Pinnock, Esq.
David C. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
San Diego, CA 92103

Phone: 619.858.3671

Fax: 619.858.3646

X

(STATE): I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL): I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at San Diego, California on August 22, 2008.


SYLVIA TERRY

101113925.1

1 John T. Brooks, State Bar No. 167793
Lisa K. Widdecke, State Bar No. 213250
2 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
3 San Diego, California 92101-3372
Telephone No.: 619.236.1414
4 Fax No.: 619.232.8311

5
6 Attorneys for Defendant MOTHERHOOD MATERNITY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO, SOUTH COUNTY

10
11 BARBARA HUMPHREY,

12 Plaintiff,

13 v.

14 PCCP OF SB LAS AMERICAS OWNER
LLC; JOCKEY INTERNATIONAL
15 GLOBAL INC; NEIMAN MARCUS LAST
CALL; RITMO LATINO INC;
16 MAIDENFORM INC; LCI HOLDINGS INC
DBA LIZ CLAIBORNE OUTLET #324;
17 SUNGLASS HUT TRADING CORP DBA
SUNGLASS OUTLET #4779;
18 MOTHERHOOD MATERNITY; STRIDE
RITE CHILDRENS GROUP DBA STRIDE
19 RITE OUTLET #6050; BROOKS
BROTHERS; SANRIO SURPRISES; GUESS
20 INC; J CREW FACTORY STORE;
PERFUME OUTLET; PUMA OUTLET
21 STORE; CONVERSE OUTLET STORE;
SUNGLASS HUT INTL; PVH CORP DBA
22 CALVIN KLEIN #062; KENNETH COLE
CATALOG INC DBA KENNETH COLE
23 OUTLET STORE; And DOES 1 THROUGH
10, Inclusive,

24 Defendants.
25

Case No. 37-2008-00071279-CU-CR-SC

The Hon. William S. Cannon
Dept. S-04

**DEFENDANT MOTHERHOOD
MATERNITY'S NOTICE OF REMOVAL
OF ACTION TO FEDERAL COURT**

Complaint Filed: June 23, 2008
Trial Date: None Set.

26 ///

27 ///

28 ///

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that on August 22, 2008, defendant Motherhood Maternity
3 (hereafter "defendant") filed in the United States District Court for the Southern District of California,
4 their Notice of Removal of Action, and that the attached copy of said Notice of Removal of Action is
5 on file with the above-captioned court.

6 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. Section 1446, the filing of
7 said Notice of Removal of Action in the United States District Court for the Southern District of
8 California, together with the filing of the attached copy of said Notice of Removal of Action with this
9 Court, effects the removal of this action, and the above-captioned court may proceed no further unless
10 and until the case is remanded.

11 DATED: August 22, 2008

Respectfully submitted,

12 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

13
14 By: 

15 John T. Brooks
16 Lisa K. Widdecke
Attorneys for Defendant Motherhood Maternity

17 101113788.1
18
19
20
21
22
23
24
25
26
27
28

1 John T. Brooks, State Bar No. 167793
Lisa K. Widdecke, State Bar No. 213250
2 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
3 San Diego, California 92101-3372
Telephone No.: 619.236.1414
4 Fax No.: 619.232.8311

5
6 Attorneys for Defendant Motherhood Maternity

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10
11 BARBARA HUMPHREY,

12 Plaintiff,

13 v.

14 PCCP OF SB LAS AMERICAS OWNER
LLC; JOCKEY INTERNATIONAL
15 GLOBAL INC; NEIMAN MARCUS LAST
CALL; RITMO LATINO INC;
16 MAIDENFORM INC; LCI HOLDINGS INC
DBA LIZ CLAIBORNE OUTLET #324;
17 SUNGLASS HUT TRADING CORP DBA
SUNGLASS OUTLET #4779;
18 MOTHERHOOD MATERNITY; STRIDE
RITE CHILDRENS GROUP DBA STRIDE
19 RITE OUTLET #6050; BROOKS
BROTHERS; SANRIO SURPRISES; GUESS
20 INC; J CREW FACTORY STORE;
PERFUME OUTLET; PUMA OUTLET
21 STORE; CONVERSE OUTLET STORE;
SUNGLASS HUT INTL; PVH CORP DBA
22 CALVIN KLEIN #062; KENNETH COLE
CATALOG INC DBA KENNETH COLE
23 OUTLET STORE; And DOES 1 THROUGH
10, Inclusive,

24 Defendants.
25

Case No. 37-2008-00071279-CU-CR-SC

The Hon. William S. Cannon
Dept. S-04

**DEFENDANT MOTHERHOOD
MATERNITY'S NOTICE TO PLAINTIFF
OF REMOVAL OF ACTION TO
FEDERAL COURT**

Complaint Filed: June 23, 2008
Trial Date: None Set.

26 ///

27 ///

28 ///

1 TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the United
3 States District Court for the Southern District of California on August 21, 2008.

4 A copy of said Notice of Removal is attached to this Notice and is served and filed herewith.

5 DATED: August 22, 2008

Respectfully submitted,

6 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

7
8 By: 

John T. Brooks

Lisa K. Widdecke

Attorneys for Defendant Motherhood Maternity

10
11 101113783.1

CIVIL COVER SHEET

rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Barbara Humphrey

DEFENDANTS

Motherhood Maternity

FILED

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Theodore A. Pinnock, Esq., State Bar No. 153434
David C. Wakefield, Esq., State Bar No. 185736
Pinnock & Wakefield
3033 Fifth Avenue, Suite 410
San Diego, CA 92103
(619) 858-3671

Attorneys (If Known)

John T. Brooks, Esq., State Bar No. 167793
Lisa K. Widdecke, State Bar No. 213250
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
(619) 236-1414

2008 AUG 22 PM 2:12
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

08 CV 1558 BEN BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1331 & 1441

Brief description of cause:

Discriminatory Practices in Public Accommodations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

August 22, 2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 154376 AMOUNT \$350

APPLYING IFF

JUDGE

MAG. JUDGE

American LegalNet, Inc.
www.AmericanLegalNet.com

ORIGINAL

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154376 - TC

**August 22, 2008
14:19:19**

Civ Fil Non-Pris

USAO #: 08CV1558

Judge.: ROGER T BENITEZ

Amount.: \$350.00 CK

Check#: BC40736

Total-> \$350.00

FROM: BARBARA HUMPHREY
VS
MOTHERHOOD MATERNITY